

AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1661

Introduced by Assembly Member Bonta

February 12, 2014

An act to add Chapter 6.4 (commencing with Section 51043) to Part 1 of Division 1 of Title 5 of the Government Code, *and to amend Sections 17276.20 and 24416.20 of the Revenue and Taxation Code*, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1661, as amended, Bonta. The Healthy Options for Everyone (HOPE) Act of 2014.

The Urban Agriculture Incentive Zones Act authorizes a city, county, or city and county to establish by ordinance an Urban Agriculture Incentive Zone within its boundaries for the purpose of entering into enforceable contracts with landowners, on a voluntary basis, for the use of vacant, unimproved, or blighted lands for small-scale agricultural use.

This bill would enact the Healthy Options for Everyone (HOPE) Act of 2014, and authorize a city, county, or city and county, after a public hearing, to establish by ordinance a HOPE Incentive Zone within its boundaries for the purpose of increasing the availability of fresh fruits and vegetables, and other grown foods within the zone. This bill would require a city, county, or city and county to analyze specific factors, including, but not limited to, population density and transportation, when considering whether to establish a HOPE Incentive Zone within an area.

The Personal Income Tax Law and Corporation Tax Law, in modified conformity with federal law, allow taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their tax liabilities. Existing law allows net operating losses for taxable years beginning on or after January 1, 2008, to be carried over to each of the 20 taxable years following the taxable year of the loss.

This bill would allow, under both laws, a qualified business, which is any trade or business that has primarily done business within a HOPE Incentive Zone, for taxable years beginning on or after January 1, 2015, to carryover a net operating loss to each of the 25 taxable years following the taxable year of the loss.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The Healthy Options for Everyone (HOPE) Act of 2014
4 provides cities, counties, and cities and counties with the ability
5 to provide incentives for businesses and individuals working within
6 HOPE Incentive Zones that can be tailored by local governments
7 to fit their area's unique needs.

8 (b) These incentives are intended to reduce the tax burden and
9 costs of doing business within a HOPE Incentive Zone which, in
10 turn, will spur the creation of new businesses, or the expansion of
11 existing businesses, within the zone.

12 (c) Incentives that will be available for individuals and
13 businesses working or doing business within a HOPE Incentive
14 Zone will include, but are not limited to, a hiring tax credit, an
15 expansion of the period for which a net operating loss may be
16 carried over, a tax credit for low-income individuals employed
17 within a zone, reductions in electricity rates, assistance for
18 developing sites within a zone, and low-interest loans for the
19 installation and maintenance of electricity and water services.

20 ~~SECTION 1.~~

21 SEC. 2. Chapter 6.4 (commencing with Section 51043) is added
22 to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.4. HEALTHY OPTIONS FOR EVERYONE (HOPE) ACT
OF 2014

51043. This chapter shall be known, and may be cited, as the Healthy Options for Everyone (HOPE) Act of 2014.

51043.1. (a) A city, county, or city and county may, after a public hearing, establish by ordinance a HOPE Incentive Zone within its boundaries for the purpose of increasing the availability of fresh fruits and vegetables, and other grown foods.

(b) A city, county, or city and county shall analyze the following factors within a geographic area when considering whether to establish a HOPE Incentive Zone within that area pursuant to subdivision (a):

- (1) Transportation.
- (2) Population density.
- (3) Income of population.
- (4) Whether the area qualifies as a “food desert” by the United States Department of Agriculture.
- (5) Percentage of population that participates in food assistance programs, including, but not limited to, a free school lunch program.

(6) Percentage of population with dietary-related illnesses.

(7) Neglected real property.

51043.2. A city, county, or city and county may, after establishing a HOPE Incentive Zone pursuant to Section 51043.1, enact an ordinance to create incentives for small businesses, farmers’ markets, grocers, and other businesses that provide fresh fruits and vegetables, and other grown foods to conduct business within the zone.

SEC. 3. Section 17276.20 of the Revenue and Taxation Code is amended to read:

17276.20. Except as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided by Section 172 of the Internal Revenue Code, relating to net operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to amount of carrybacks and carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (d).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who

operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in subdivision (d).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of that paragraph, paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, the term “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) Section 172(b)(1) of the Internal Revenue Code, relating to years to which the loss may be carried, is modified as follows:

(1) Net operating loss carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2013.

(2) A net operating loss attributable to taxable years beginning on or after January 1, 2013, shall be a net operating loss carryback to each of the two taxable years preceding the taxable year of the loss in lieu of the number of years provided therein.

(A) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, and before January 1, 2014, the amount of carryback to any taxable year shall not exceed 50 percent of the net operating loss.

(B) For a net operating loss attributable to a taxable year beginning on or after January 1, 2014, and before January 1, 2015, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.

(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2015, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.

(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the Internal Revenue Code, relating to special rules for REITs, and Section 172(b)(1)(E) of the Internal Revenue Code, relating to excess interest loss, and Section 172(h) of the Internal Revenue Code, relating to corporate equity reduction interest losses, shall apply as provided.

(4) A net operating loss carryback shall not be carried back to any taxable year beginning before January 1, 2011.

(d) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute “five taxable years” in lieu of “20 taxable years” except as otherwise provided in paragraphs (2) and (3).

(B) For a net operating loss for any taxable year beginning on or after January 1, 2000, and before January 1, 2008, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute “10 taxable years” in lieu of “20 taxable years.”

1 (2) For any taxable year beginning before January 1, 2000, in
2 the case of a “new business,” the “five taxable years” in paragraph
3 (1) shall be modified to read as follows:

4 (A) “Eight taxable years” for a net operating loss attributable
5 to the first taxable year of that new business.

6 (B) “Seven taxable years” for a net operating loss attributable
7 to the second taxable year of that new business.

8 (C) “Six taxable years” for a net operating loss attributable to
9 the third taxable year of that new business.

10 (3) For any carryover of a net operating loss for which a
11 deduction is denied by Section 17276.3, the carryover period
12 specified in this subdivision shall be extended as follows:

13 (A) By one year for a net operating loss attributable to taxable
14 years beginning in 1991.

15 (B) By two years for a net operating loss attributable to taxable
16 years beginning prior to January 1, 1991.

17 (4) The net operating loss attributable to taxable years beginning
18 on or after January 1, 1987, and before January 1, 1994, shall be
19 a net operating loss carryover to each of the 10 taxable years
20 following the year of the loss if it is incurred by a taxpayer that is
21 under the jurisdiction of the court in a Title 11 or similar case at
22 any time during the income year. The loss carryover provided in
23 the preceding sentence shall not apply to any loss incurred after
24 the date the taxpayer is no longer under the jurisdiction of the court
25 in a Title 11 or similar case.

26 (5) (A) *For a net operating loss for any taxable year beginning*
27 *on or after January 1, 2015, in the case of a “qualified business,”*
28 *Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified*
29 *to substitute “25 taxable years” in lieu of “20 taxable years.”*

30 (B) *For purposes of this paragraph, “qualified business” means*
31 *any trade or business that has primarily done business within a*
32 *HOPE Incentive Zone, as established by Section 51043.1 of the*
33 *Government Code, during the taxable year.*

34 (e) For purposes of this section:

35 (1) “Eligible small business” means any trade or business that
36 has gross receipts, less returns and allowances, of less than one
37 million dollars (\$1,000,000) during the taxable year.

38 (2) Except as provided in subdivision (f), “new business” means
39 any trade or business activity that is first commenced in this state
40 on or after January 1, 1994.

1 (3) “Title 11 or similar case” shall have the same meaning as
2 in Section 368(a)(3) of the Internal Revenue Code.

3 (4) In the case of any trade or business activity conducted by a
4 partnership or “S” corporation paragraphs (1) and (2) shall be
5 applied to the partnership or “S” corporation.

6 (f) For purposes of this section, in determining whether a trade
7 or business activity qualifies as a new business under paragraph
8 (2) of subdivision (e), the following rules shall apply:

9 (1) In any case where a taxpayer purchases or otherwise acquires
10 all or any portion of the assets of an existing trade or business
11 (irrespective of the form of entity) that is doing business in this
12 state (within the meaning of Section 23101), the trade or business
13 thereafter conducted by the taxpayer (or any related person) shall
14 not be treated as a new business if the aggregate fair market value
15 of the acquired assets (including real, personal, tangible, and
16 intangible property) used by the taxpayer (or any related person)
17 in the conduct of its trade or business exceeds 20 percent of the
18 aggregate fair market value of the total assets of the trade or
19 business being conducted by the taxpayer (or any related person).
20 For purposes of this paragraph only, the following rules shall apply:

21 (A) The determination of the relative fair market values of the
22 acquired assets and the total assets shall be made as of the last day
23 of the first taxable year in which the taxpayer (or any related
24 person) first uses any of the acquired trade or business assets in
25 its business activity.

26 (B) Any acquired assets that constituted property described in
27 Section 1221(1) of the Internal Revenue Code in the hands of the
28 transferor shall not be treated as assets acquired from an existing
29 trade or business, unless those assets also constitute property
30 described in Section 1221(1) of the Internal Revenue Code in the
31 hands of the acquiring taxpayer (or related person).

32 (2) In any case where a taxpayer (or any related person) is
33 engaged in one or more trade or business activities in this state, or
34 has been engaged in one or more trade or business activities in this
35 state within the preceding 36 months (“prior trade or business
36 activity”), and thereafter commences an additional trade or business
37 activity in this state, the additional trade or business activity shall
38 only be treated as a new business if the additional trade or business
39 activity is classified under a different division of the Standard
40 Industrial Classification (SIC) Manual published by the United

1 States Office of Management and Budget, 1987 edition, than are
2 any of the taxpayer's (or any related person's) current or prior
3 trade or business activities.

4 (3) In any case where a taxpayer, including all related persons,
5 is engaged in trade or business activities wholly outside of this
6 state and the taxpayer first commences doing business in this state
7 (within the meaning of Section 23101) after December 31, 1993
8 (other than by purchase or other acquisition described in paragraph
9 (1)), the trade or business activity shall be treated as a new business
10 under paragraph (2) of subdivision (e).

11 (4) In any case where the legal form under which a trade or
12 business activity is being conducted is changed, the change in form
13 shall be disregarded and the determination of whether the trade or
14 business activity is a new business shall be made by treating the
15 taxpayer as having purchased or otherwise acquired all or any
16 portion of the assets of an existing trade or business under the rules
17 of paragraph (1).

18 (5) "Related person" shall mean any person that is related to
19 the taxpayer under either Section 267 or 318 of the Internal
20 Revenue Code.

21 (6) "Acquire" shall include any gift, inheritance, transfer incident
22 to divorce, or any other transfer, whether or not for consideration.

23 (7) (A) For taxable years beginning on or after January 1, 1997,
24 the term "new business" shall include any taxpayer that is engaged
25 in biopharmaceutical activities or other biotechnology activities
26 that are described in Codes 2833 to 2836, inclusive, of the Standard
27 Industrial Classification (SIC) Manual published by the United
28 States Office of Management and Budget, 1987 edition, and as
29 further amended, and that has not received regulatory approval for
30 any product from the Food and Drug Administration.

31 (B) For purposes of this paragraph:

32 (i) "Biopharmaceutical activities" means those activities that
33 use organisms or materials derived from organisms, and their
34 cellular, subcellular, or molecular components, in order to provide
35 pharmaceutical products for human or animal therapeutics and
36 diagnostics. Biopharmaceutical activities make use of living
37 organisms to make commercial products, as opposed to
38 pharmaceutical activities that make use of chemical compounds
39 to produce commercial products.

(ii) “Other biotechnology activities” means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(g) In computing the modifications under Section 172(d)(2) of the Internal Revenue Code, relating to capital gains and losses of taxpayers other than corporations, the exclusion provided by Section 18152.5 shall not be allowed.

(h) Notwithstanding any provisions of this section to the contrary, a deduction shall be allowed to a “qualified taxpayer” as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7.

(i) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(j) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(k) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 4. Section 24416.20 of the Revenue and Taxation Code is amended to read:

24416.20. Except as provided in Sections 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to amount of carrybacks and carryovers, shall be modified

1 so that the applicable percentage of the entire amount of the net
2 operating loss for any taxable year shall be eligible for carryover
3 to any subsequent taxable year. For purposes of this subdivision,
4 the applicable percentage shall be:

5 (A) Fifty percent for any taxable year beginning before January
6 1, 2000.

7 (B) Fifty-five percent for any taxable year beginning on or after
8 January 1, 2000, and before January 1, 2002.

9 (C) Sixty percent for any taxable year beginning on or after
10 January 1, 2002, and before January 1, 2004.

11 (D) One hundred percent for any taxable year beginning on or
12 after January 1, 2004.

13 (2) In the case of a taxpayer who has a net operating loss in any
14 taxable year beginning on or after January 1, 1994, and who
15 operates a new business during that taxable year, each of the
16 following shall apply to each loss incurred during the first three
17 taxable years of operating the new business:

18 (A) If the net operating loss is equal to or less than the net loss
19 from the new business, 100 percent of the net operating loss shall
20 be carried forward as provided in subdivision (e).

21 (B) If the net operating loss is greater than the net loss from the
22 new business, the net operating loss shall be carried over as
23 follows:

24 (i) With respect to an amount equal to the net loss from the new
25 business, 100 percent of that amount shall be carried forward as
26 provided in subdivision (e).

27 (ii) With respect to the portion of the net operating loss that
28 exceeds the net loss from the new business, the applicable
29 percentage of that amount shall be carried forward as provided in
30 subdivision (d).

31 (C) For purposes of Section 172(b)(2) of the Internal Revenue
32 Code, the amount described in clause (ii) of subparagraph (B) shall
33 be absorbed before the amount described in clause (i) of
34 subparagraph (B).

35 (3) In the case of a taxpayer who has a net operating loss in any
36 taxable year beginning on or after January 1, 1994, and who
37 operates an eligible small business during that taxable year, each
38 of the following shall apply:

39 (A) If the net operating loss is equal to or less than the net loss
40 from the eligible small business, 100 percent of the net operating

1 loss shall be carried forward to the taxable years specified in
2 paragraph (1) of subdivision (e).

3 (B) If the net operating loss is greater than the net loss from the
4 eligible small business, the net operating loss shall be carried over
5 as follows:

6 (i) With respect to an amount equal to the net loss from the
7 eligible small business, 100 percent of that amount shall be carried
8 forward as provided in subdivision (e).

9 (ii) With respect to that portion of the net operating loss that
10 exceeds the net loss from the eligible small business, the applicable
11 percentage of that amount shall be carried forward as provided in
12 subdivision (e).

13 (C) For purposes of Section 172(b)(2) of the Internal Revenue
14 Code, the amount described in clause (ii) of subparagraph (B) shall
15 be absorbed before the amount described in clause (i) of
16 subparagraph (B).

17 (4) In the case of a taxpayer who has a net operating loss in a
18 taxable year beginning on or after January 1, 1994, and who
19 operates a business that qualifies as both a new business and an
20 eligible small business under this section, that business shall be
21 treated as a new business for the first three taxable years of the
22 new business.

23 (5) In the case of a taxpayer who has a net operating loss in a
24 taxable year beginning on or after January 1, 1994, and who
25 operates more than one business, and more than one of those
26 businesses qualifies as either a new business or an eligible small
27 business under this section, paragraph (2) shall be applied first,
28 except that if there is any remaining portion of the net operating
29 loss after application of clause (i) of subparagraph (B) of paragraph
30 (2), paragraph (3) shall be applied to the remaining portion of the
31 net operating loss as though that remaining portion of the net
32 operating loss constituted the entire net operating loss.

33 (6) For purposes of this section, “net loss” means the amount
34 of net loss after application of Sections 465 and 469 of the Internal
35 Revenue Code.

36 (c) For any taxable year in which the taxpayer has in effect a
37 water’s-edge election under Section 25110, the deduction of a net
38 operating loss carryover shall be denied to the extent that the net
39 operating loss carryover was determined by taking into account
40 the income and factors of an affiliated corporation in a combined

1 report whose income and apportionment factors would not have
2 been taken into account if a water's-edge election under Section
3 25110 had been in effect for the taxable year in which the loss was
4 incurred.

5 (d) Section 172(b)(1) of the Internal Revenue Code, relating to
6 years to which the loss may be carried, is modified as follows:

7 (1) Net operating loss carrybacks shall not be allowed for any
8 net operating losses attributable to taxable years beginning before
9 January 1, 2013.

10 (2) A net operating loss attributable to taxable years beginning
11 on or after January 1, 2013, shall be a net operating loss carryback
12 to each of the two taxable years preceding the taxable year of the
13 loss in lieu of the number of years provided therein.

14 (A) For a net operating loss attributable to a taxable year
15 beginning on or after January 1, 2013, and before January 1, 2014,
16 the amount of carryback to any taxable year shall not exceed 50
17 percent of the net operating loss.

18 (B) For a net operating loss attributable to a taxable year
19 beginning on or after January 1, 2014, and before January 1, 2015,
20 the amount of carryback to any taxable year shall not exceed 75
21 percent of the net operating loss.

22 (C) For a net operating loss attributable to a taxable year
23 beginning on or after January 1, 2015, the amount of carryback to
24 any taxable year shall not exceed 100 percent of the net operating
25 loss.

26 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the
27 Internal Revenue Code, relating to special rules for REITs, and
28 Section 172(b)(1)(E) of the Internal Revenue Code, relating to
29 excess interest loss, and Section 172(h) of the Internal Revenue
30 Code, relating to corporate equity reduction interest losses, shall
31 apply as provided.

32 (4) A net operating loss carryback shall not be carried back to
33 any taxable year beginning before January 1, 2011.

34 (e) (1) (A) For a net operating loss for any taxable year
35 beginning on or after January 1, 1987, and before January 1, 2000,
36 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified
37 to substitute "five taxable years" in lieu of "20 years" except as
38 otherwise provided in paragraphs (2), (3), and (4).

39 (B) For a net operating loss for any income year beginning on
40 or after January 1, 2000, and before January 1, 2008, Section

1 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to
2 substitute “10 taxable years” in lieu of “20 taxable years.”

3 (2) For any income year beginning before January 1, 2000, in
4 the case of a “new business,” the “five taxable years” referred to
5 in paragraph (1) shall be modified to read as follows:

6 (A) “Eight taxable years” for a net operating loss attributable
7 to the first taxable year of that new business.

8 (B) “Seven taxable years” for a net operating loss attributable
9 to the second taxable year of that new business.

10 (C) “Six taxable years” for a net operating loss attributable to
11 the third taxable year of that new business.

12 (3) For any carryover of a net operating loss for which a
13 deduction is denied by Section 24416.3, the carryover period
14 specified in this subdivision shall be extended as follows:

15 (A) By one year for a net operating loss attributable to taxable
16 years beginning in 1991.

17 (B) By two years for a net operating loss attributable to taxable
18 years beginning prior to January 1, 1991.

19 (4) The net operating loss attributable to taxable years beginning
20 on or after January 1, 1987, and before January 1, 1994, shall be
21 a net operating loss carryover to each of the 10 taxable years
22 following the year of the loss if it is incurred by a corporation that
23 was either of the following:

24 (A) Under the jurisdiction of the court in a Title 11 or similar
25 case at any time prior to January 1, 1994. The loss carryover
26 provided in the preceding sentence shall not apply to any loss
27 incurred in an income year after the taxable year during which the
28 corporation is no longer under the jurisdiction of the court in a
29 Title 11 or similar case.

30 (B) In receipt of assets acquired in a transaction that qualifies
31 as a tax-free reorganization under Section 368(a)(1)(G) of the
32 Internal Revenue Code.

33 (5) (A) *For a net operating loss for any taxable year beginning*
34 *on or after January 1, 2015, in the case of a “qualified business,”*
35 *Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified*
36 *to substitute “25 taxable years” in lieu of “20 taxable years.”*

37 (B) *For purposes of this paragraph, “qualified business” means*
38 *any trade or business that has primarily done business within a*
39 *HOPE Incentive Zone, as established by Section 51043.1 of the*
40 *Government Code, during the taxable year.*

1 (f) For purposes of this section:

2 (1) “Eligible small business” means any trade or business that
3 has gross receipts, less returns and allowances, of less than one
4 million dollars (\$1,000,000) during the income year.

5 (2) Except as provided in subdivision (g), “new business” means
6 any trade or business activity that is first commenced in this state
7 on or after January 1, 1994.

8 (3) “Title 11 or similar case” shall have the same meaning as
9 in Section 368(a)(3) of the Internal Revenue Code.

10 (4) In the case of any trade or business activity conducted by a
11 partnership or an “S” corporation, paragraphs (1) and (2) shall be
12 applied to the partnership or “S” corporation.

13 (g) For purposes of this section, in determining whether a trade
14 or business activity qualifies as a new business under paragraph
15 (2) of subdivision (e), the following rules shall apply:

16 (1) In any case where a taxpayer purchases or otherwise acquires
17 all or any portion of the assets of an existing trade or business
18 (irrespective of the form of entity) that is doing business in this
19 state (within the meaning of Section 23101), the trade or business
20 thereafter conducted by the taxpayer (or any related person) shall
21 not be treated as a new business if the aggregate fair market value
22 of the acquired assets (including real, personal, tangible, and
23 intangible property) used by the taxpayer (or any related person)
24 in the conduct of its trade or business exceeds 20 percent of the
25 aggregate fair market value of the total assets of the trade or
26 business being conducted by the taxpayer (or any related person).
27 For purposes of this paragraph only, the following rules shall apply:

28 (A) The determination of the relative fair market values of the
29 acquired assets and the total assets shall be made as of the last day
30 of the first taxable year in which the taxpayer (or any related
31 person) first uses any of the acquired trade or business assets in
32 its business activity.

33 (B) Any acquired assets that constituted property described in
34 Section 1221(1) of the Internal Revenue Code in the hands of the
35 transferor shall not be treated as assets acquired from an existing
36 trade or business, unless those assets also constitute property
37 described in Section 1221(1) of the Internal Revenue Code in the
38 hands of the acquiring taxpayer (or related person).

39 (2) In any case where a taxpayer (or any related person) is
40 engaged in one or more trade or business activities in this state, or

1 has been engaged in one or more trade or business activities in this
2 state within the preceding 36 months (“prior trade or business
3 activity”), and thereafter commences an additional trade or business
4 activity in this state, the additional trade or business activity shall
5 only be treated as a new business if the additional trade or business
6 activity is classified under a different division of the Standard
7 Industrial Classification (SIC) Manual published by the United
8 States Office of Management and Budget, 1987 edition, than are
9 any of the taxpayer’s (or any related person’s) current or prior
10 trade or business activities.

11 (3) In any case where a taxpayer, including all related persons,
12 is engaged in trade or business activities wholly outside of this
13 state and the taxpayer first commences doing business in this state
14 (within the meaning of Section 23101) after December 31, 1993
15 (other than by purchase or other acquisition described in paragraph
16 (1)), the trade or business activity shall be treated as a new business
17 under paragraph (2) of subdivision (e).

18 (4) In any case where the legal form under which a trade or
19 business activity is being conducted is changed, the change in form
20 shall be disregarded and the determination of whether the trade or
21 business activity is a new business shall be made by treating the
22 taxpayer as having purchased or otherwise acquired all or any
23 portion of the assets of an existing trade or business under the rules
24 of paragraph (1).

25 (5) “Related person” shall mean any person that is related to
26 the taxpayer under either Section 267 or 318 of the Internal
27 Revenue Code.

28 (6) “Acquire” shall include any transfer, whether or not for
29 consideration.

30 (7) (A) For taxable years beginning on or after January 1, 1997,
31 the term “new business” shall include any taxpayer that is engaged
32 in biopharmaceutical activities or other biotechnology activities
33 that are described in Codes 2833 to 2836, inclusive, of the Standard
34 Industrial Classification (SIC) Manual published by the United
35 States Office of Management and Budget, 1987 edition, and as
36 further amended, and that has not received regulatory approval for
37 any product from the Food and Drug Administration.

38 (B) For purposes of this paragraph:

39 (i) “Biopharmaceutical activities” means those activities that
40 use organisms or materials derived from organisms, and their

1 cellular, subcellular, or molecular components, in order to provide
2 pharmaceutical products for human or animal therapeutics and
3 diagnostics. Biopharmaceutical activities make use of living
4 organisms to make commercial products, as opposed to
5 pharmaceutical activities that make use of chemical compounds
6 to produce commercial products.

7 (ii) “Other biotechnology activities” means activities consisting
8 of the application of recombinant DNA technology to produce
9 commercial products, as well as activities regarding pharmaceutical
10 delivery systems designed to provide a measure of control over
11 the rate, duration, and site of pharmaceutical delivery.

12 (h) For purposes of corporations whose net income is determined
13 under Chapter 17 (commencing with Section 25101), Section
14 25108 shall apply to each of the following:

15 (1) The amount of net operating loss incurred in any taxable
16 year that may be carried forward to another taxable year.

17 (2) The amount of any loss carry forward that may be deducted
18 in any taxable year.

19 (i) The provisions of Section 172(b)(1)(D) of the Internal
20 Revenue Code, relating to bad debt losses of commercial banks,
21 shall not be applicable.

22 (j) The Franchise Tax Board may prescribe appropriate
23 regulations to carry out the purposes of this section, including any
24 regulations necessary to prevent the avoidance of the purposes of
25 this section through splitups, shell corporations, partnerships, tiered
26 ownership structures, or otherwise.

27 (k) The Franchise Tax Board may reclassify any net operating
28 loss carryover determined under either paragraph (2) or (3) of
29 subdivision (b) as a net operating loss carryover under paragraph
30 (1) of subdivision (b) upon a showing that the reclassification is
31 necessary to prevent evasion of the purposes of this section.

32 (l) Except as otherwise provided, the amendments made by
33 Chapter 107 of the Statutes of 2000 shall apply to net operating
34 losses for taxable years beginning on or after January 1, 2000.